IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 12724 of 2005

Between:

Kamma Narasimha Swamy, S/o.Late Subbaramaiah,
R/o.Pandithavilluru, Podur Mandal, W.G.District.

..... PETITIONER

AND

1 The Govt of A.P, represented by its Principal Secretary, Revenue (Endowments Department), Secretariat, Hyderabad.
2 The Commissioner of Endowments, Government of A.P., Endowments Department,
Boggulakunta, Hyderabad.
3 Sri Kesava Swamyvari Devasthanam, represented by its Executive- Officer, Pandithavilluru, Podur Mandal, W.G.District.

4 The Assistant Commissioner of Endowments, Government of Andhra Pradesh, Endowments Department, Eluru, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue order or orders, direction or directions, writ or writs, particularly one in the nature of writ of mandamus declaring the action of the 3rd respondent in issuing notice No.2/2005, dt.25-4-2005 in Form 1 Under Rule 5(1) of the Rules as Unconstitutional, ultravires of the Sec.83 of the Act 30 of 1987 and set aside the same and declare the proposed action of the respondents in evicting the petitioner from the lands situated in R.S.No.54, to the extent of Ac.2.30 3/4 Cents in Pancithavilluru, Poduru Mandal, West Godavari district, as illegal, arbitrary and violative of Fundamental Rights guaranteed under the Constitution of India, consequently direct the respondent not to evict the petitioner from the above said lands.

Counsel for the Petitioner: MR.K.L.N.SWAMY
Counsel for the Respondent Nos.1 and 2 and 4: GP FOR ENDOWMENTS
Counsel for respondent No.3: SMT.INDRANI

The Court made the following:

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ORAL ORDER:

This Writ Petition is being disposed of at the stage of admission with the consent of the learned counsel for the petitioner, the learned Government Pleader for Endowments for respondents 1, 2 and 4 and Smt.N.Indrani for the 3rd respondent.

2. The petitioner herein contends that he is cultivating land belonging to the 3rd respondent-Sri Kesava Swamyvari Devasthanam for more than six years and that he is a landless poor person. He challenges the validity of the notice issued in Form-I, under Rule 5(1) of Andhra Pradesh Charitable and Hindu Religious Institutions, Endowments Lease of Agricultural Lands Rules (for short the Rules), dated 25.4.2005, whereby he was informed that the lease in respect of the agricultural land specified under the Schedule stood cancelled with immediate effect, that the lease hold rights in respect of the said lands were proposed to be leased out as per Rules and therefore he should hand over possession of the lands within 30 days. It is the case of the petitioner that he continues to remain in possession of the land till date.

3. Rule 3, of the Rules, notified in G.O.Ms.No.379, Revenue (Endowments.I), dated 11.3.2003, reads thus:

> "**Determination of landless poor person**:- (1) Immediately after coming into force of these Rules, if any cultivating tenant claims to be a landless poor person, the Assistant Commissioner having territorial jurisdiction shall enquire into and decide whether the cultivating tenant is a landless poor person as defined in Section 82 after giving a reasonable opportunity to the institution or endowment. (2) If the cultivating tenant does not claim to be a landless poor person or if the Assistant Commissioner determines that the cultivating tenant is not landless poor person, the tenancy will be deemed to have been cancelled with effect from 28.5.1987 and the cultivating tenant shall be regarded as a tenant holding over thereafter"

4. It is clear from the said Rule that the Assistant Commissioner is required to

enquire into and decide as to whether the cultivating tenant is a landless poor person or not as determined under Section 82 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the Act) and that this determination shall be made after giving a reasonable opportunity of being heard to the cultivating tenant and to the Executive Officer of the concerned Institution. It is only on such determination, that the benefits under Section 82 of the Act would enure to the benefit of a landless poor person. Since no such determination has been made in the case of the petitioner till date, the applicability or otherwise of the benefits available to a landless poor person under Section 82 of the Act will have to await such determination.

5. There shall be a direction to the 4th respondent-Assistant Commissioner of Endowments, Government of Andhra Pradesh, Endowments Department, Eluru, West Godavari District, to determine as to whether the petitioner is a landless poor person, after causing such enquiry as is contemplated under Rule 3 of the Rules and after giving an opportunity to the petitioner and the 3rd respondent-Executive Officer, within a period of two (02) months from the date of receipt of a copy of this order. Pending such determination, petitioner shall continue to remain in possession of the lands belonging to the 3rd respondent under his cultivation.

6. The Writ Petition is disposed of with the above directions. There shall be no order as to costs.

16.06.2005

SSR

To

1 The Principal Secretary, Revenue (Endowments
Department), Government of A.P., Secretariat, Hyderabad.
2 The Commissioner of Endowments, Government of A.P., Endowments Department,
Boggulakunta, Hyderabad.
3 The Executive- Officer, Sri Kesava Swamyvari Devasthanam,

Pandithavilluru, Podur Mandal, W.G.District.

4 The Assistant Commissioner of Endowments, Government of Andhra Pradesh, Endowments Department, Eluru, West Godavari District.

5 2 CCs to G.P. for Endowments, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies

7 1 CC to MR.SWAMY

*Form-NIC-OGS/WP{**TRR**}*